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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 12

[Docket ID: FEMA-2014-0011]

RIN 1660-AA81

Removal of Federal Advisory Committee Act Regulations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This final rule removes the regulations that implement the Federal Advisory Committee Act (FACA) for the Federal Emergency Management Agency (FEMA). FEMA's implementation of FACA is now governed by the rules promulgated by the General Services Administration (GSA) and by the policies issued by the Department of Homeland Security (DHS).

DATES: Effective Date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

The Federal Advisory Committee Act¹ of 1972 (FACA) governs the establishment, operation, oversight, and termination of advisory committees within the executive branch of the Federal Government. With certain exceptions, an advisory committee is “any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof” established or utilized by the President or one or more agencies, or established by statute, for the purpose of obtaining advice or recommendations.² FACA includes requirements that each advisory committee have a charter and that meetings be open to the public, subject to certain limited exceptions.³ FACA also establishes a Committee Management Secretariat within the General Services Administration (GSA) that is responsible for all matters related to advisory committees.⁴ Pursuant to Executive Order 12024, the Administrator of GSA has been delegated all of the functions vested in the President by FACA. FACA requires that each agency establish uniform administrative guidelines and management controls for advisory committees established by the agency.⁵ The Federal Emergency Management Agency (FEMA) implemented the requirements of FACA through regulations published at 44 CFR part 12 titled “Advisory Committees” on

¹ Public Law 92-463, 86 Stat. 770 (Oct. 6, 1972), as amended, 5 U.S.C. App.

² Sec. 3, Public Law 92-463, as amended, 5 U.S.C. App.

³ Secs. 9, 10, Public Law 92-463, as amended, 5 U.S.C. App.

⁴ Sec. 7, Public Law 92-463, as amended, 5 U.S.C. App.

⁵ Sec. 8, Public Law 92-463, as amended, 5 U.S.C. App.

September 29, 1980.⁶ FEMA has made subsequent technical changes, but has made no substantive changes to the rule.⁷

On April 28, 1983, GSA published an interim final rule providing administrative and interpretative guidelines for Federal agencies on the implementation of FACA⁸, followed by a final rule on December 2, 1987.⁹ GSA published another final rule on October 5, 1989 to clarify aspects of the 1987 rule.¹⁰ In 1997, GSA determined that the 1987 and 1989 regulations had become out-of-date as a result of significant decisions issued by the Supreme Court and other Federal Courts. On June 10, 1997, GSA issued an Advance Notice of Proposed Rulemaking to seek input on a proposed revision.¹¹ GSA published a proposed rule on January 14, 2000¹² and a final rule on July 19, 2001.¹³ The 2001 GSA FACA rule is codified at 41 CFR part 102-3. The rule “provides the policy framework that must be used by agency heads in applying the Federal Advisory Committee Act.” 41 CFR 102-3.5.

II. Discussion of the Rule

This rule removes FEMA’s regulations implementing FACA at 44 CFR part 12. FEMA’s regulations implementing FACA are obsolete. Since FEMA promulgated its rule in 1980, GSA has promulgated several rules, including the 2001 rule setting up the framework for advisory committees throughout the executive branch of the Federal Government. GSA’s rule includes detailed requirements for advisory committees along

⁶ 45 FR 64179, Sep. 29, 1980.

⁷ See 47 FR 13148, 13149-50, Mar. 29, 1982; 48 FR 44541, 44543, Sept. 29, 1983; 49 FR 33878, 33879, Aug. 27, 1984; 50 FR 40004, 40007, Oct. 1, 1985; 74 FR 15328, 15337-8, Apr. 3, 2009.

⁸ 48 FR 19324, Apr. 28, 1983.

⁹ 52 FR 45926, Dec. 2, 1987.

¹⁰ 54 FR 41214, Oct. 5, 1989.

¹¹ 62 FR 31550, June 10, 1997.

¹² 65 FR 2504, Jan. 14, 2000.

¹³ 66 FR 37728, July 19, 2001.

with appendices that contain key points and principles answering frequently asked questions on Federal advisory committees.

In addition, FEMA, as a part of the Department of Homeland Security (DHS), follows the policies of DHS. FEMA was an independent agency when it promulgated its rule in 1980, but became part of DHS in 2003.¹⁴ DHS has an internal directive governing committee management; that directive is available on the web at

http://www.dhs.gov/xlibrary/assets/foia/mgmt_directive_2300_committee_management.pdf. FEMA follows the DHS directive for the management of its advisory committees.

This removal of part 12 reflects FEMA's existing practice of following GSA's regulations and DHS policies, rather than the obsolete part 12 regulations.

III. Regulatory Analyses

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires an agency to publish a rule for public comment prior to implementation. 5 U.S.C. 553. The APA, however, provides an exception to this requirement for rules of agency procedure or practice. 5 U.S.C. 553(b)(3)(A). FEMA's removal of 44 CFR part 12 is related to FEMA's internal procedures. This rule addresses the internal procedures that FEMA uses for advisory committees, and it is limited to the requirements on FEMA for setting up and administering FACA committees. This rule falls within the APA's exception for rules of agency procedure or practice.

B. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review

¹⁴ Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135 (Nov. 25, 2002). See also 6 U.S.C. 313 ("There is in the Department [of Homeland Security] the Federal Emergency Management Agency.")

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget. As explained in the background section, this rule is a removal of an obsolete part of 44 CFR. It will make no substantive changes to FEMA policies and procedures. This rule imposes no regulatory costs on the public. FEMA reviewed its regulations and determined that part 12 is outmoded. Therefore, FEMA has decided that it should repeal its advisory committee regulations and rely on the GSA rule and DHS guidance.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121, 110 Stat. 847, 858-9 (Mar. 29, 1996) (5 U.S.C. 601 note) require that special consideration be given to the effects of proposed regulations on small entities. The RFA mandates that an agency conduct an RFA analysis when an agency is “required by section 553 . . . , or any other law, to publish general notice of proposed rulemaking for any proposed rule[.]” 5 U.S.C. 603(a). Accordingly, an RFA is not required when a rule is exempt from notice and comment rulemaking. FEMA has determined that this rule is

exempt from notice and comment rulemaking. Therefore, an RFA analysis under 5 U.S.C. 603 is not required for this rule.

D. Unfunded Mandates Reform Act

FEMA has not issued a notice of proposed rulemaking for this regulatory action; therefore, the provisions of the Unfunded Mandates Reform Act of 1995, as amended, 2 U.S.C. 658, 1501-1504, 1531-1536, 1571, do not apply to this regulatory action.

E. Paperwork Reduction Act (PRA) of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, 109 Stat. 163 (May 22, 1995) (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. FEMA has determined that this rulemaking does not require any collection of information under the Paperwork Reduction Act.

F. National Environmental Policy Act (NEPA) of 1969

Section 102 of the National Environmental Policy Act of 1969 (NEPA), Public Law 91-190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.) requires agencies to consider the impacts in their decision-making on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR parts 1500 through 1508, require Federal agencies to prepare Environmental Impact Statements (EIS) for major federal actions significantly affecting the quality of the human environment. Each agency can develop categorical exclusions to cover actions that typically do not trigger significant impacts to the human environment individually or cumulatively. Agencies develop environmental assessments (EA) to evaluate those

actions that do not fit an agency's categorical exclusion and for which the need for an EIS is not readily apparent. At the end of the EA process, the agency will determine whether to make a Finding of No Significant Impact or whether to initiate the EIS process.

Rulemaking is a major federal action subject to NEPA. However, FEMA has categorically excluded certain actions from the preparation of an EIS or EA, unless extraordinary circumstances exist. As applicable here, 44 CFR 10.8(d)(2)(ii) exempts the preparation, revision, and adoption of regulations from the preparation of an EA or EIS if the rule relates to an action that qualifies for a categorical exclusion. Administrative actions are categorically excluded from NEPA. 44 CFR 10.8(d)(2)(i). Because this is a rulemaking related to an administrative function and no extraordinary circumstances exist, no EA or EIS will be prepared.

G. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments," (65 FR 67249, Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal

Government, or the agency consults with Tribal officials. FEMA has determined that this rulemaking will not have tribal implications.

H. Executive Order 13132, Federalism

A rule has implications for federalism under Executive Order 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rulemaking does not have federalism implications.

I. Executive Order 12898, Environmental Justice

Under Executive Order 12898, as amended, “Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, Feb. 16, 1994), FEMA incorporates environmental justice into its policies and programs. Executive Order 12898 requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefit of, or subjecting persons to discrimination because of their race, color, national origin or income level.

No action that FEMA can anticipate under this rule will have a disproportionately high and adverse human health or environmental effect on any segment of the population.

J. Executive Order 12988, Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, Feb. 9, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

K. Congressional Review Act

FEMA has sent this final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, (“Congressional Review Act”), Public Law 104-121, 110 Stat. 847 (Mar. 29, 1996) (5 U.S.C. 801 et seq.). This rule is not a “major rule” within the meaning of the Congressional Review Act. It will not have an annual effect on the economy of \$100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 44 CFR Part 12

Advisory committees.

For the reasons discussed in the preamble, and under the authority of the Homeland Security Act of 2002, 6 U.S.C. 101 et seq., and the Federal Advisory

Committee Act, 5 U.S.C. App., the Federal Emergency Management Agency amends 44 CFR Chapter I, subchapter A, as follows:

PART 12—[REMOVED AND RESERVED]

1. Remove and reserve part 12, consisting of §§ 12.1 through 12.19.

Dated: March 6, 2014.

W. Craig Fugate

Administrator,

Federal Emergency Management Agency.

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